IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2589 OF 2004

Surjit Kaur Hundal,
Flat No. 302, Building No. B-3,
Jasmine Co-opearative Housing
Society, Trivedi Complex, Opp. Talao
Mira Road (East),
Dist. Thane 401 107. ... Petitioner

Versus

1. The State of Maharashtra,
through its Chief Secretary,
Mantralaya, Mumbai 400032.

2. Hon'ble Judge Shri. R.R.
Vachha, Principal Judge and
Chairman, Monitoring Committee,
ULC, 3rd Floor, City Civil Court,
Fort, Mumbai 400 023.

3. Shri. S.R. Jhondhale,
Additional Collector, Competent
Authority and Secretary,
Monitoring Committee, ULC,
5th Floor, Administrative Building,
Near Chetana College, Bandra (East),
Mumbai 400 051.

4. Shri. M.B. Gharbude,
Superintending Engineer,
Member, Monitoring Committee,
ULC, Mumbai P.W.D. Circle,
25, Murzban Road,
Mumbai 400 001.

5. A.K. Mago,
Commissioner for M.M.R.D.A.
Plot No. C/14/15, Near Drive-
In-Theatre, Bandra-Kurla
Complex, Bandra (E),
Mumbai 400 057.

6. Hiranandani Construction
Pvt. Ltd. Olympia, Central
Avenue, Hiranandani Business
Park, Powai, Mumbai 400 076. ... Respondents

Mr. P.M. Shah for Petitioner.

Mr. R.A. Dada, Sr. Advocate with Mr. Subodh Joshi and Mr.P.K. Shroff and Ms. Radhika A. Pinzara and Ms.Christine i/by P.K. Shroff & Co. for R.No. 6.

Mr. K.R. Belosey, A.G.P. for R. Nos. 1 to 3.

Mr. R.M. Sawant, Government Pleader for R. Nos. 4 and 5.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : APRIL 27, 2005

ORAL JUDGMENT (Per F.I. Rebello,J.):

1. The Petitioner contends that he is senior citizen not having any shelter in the State of Maharashtra and belongs to weaker section of the society. In these circumstances, the Petitioner made an application on 6.5.2003 to Respondent No. 6. It is contended that the said application is maintainable considering the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and Rules, 1976 (hereinafter referred to as "Urban Land Ceiling Act" for the sake of brevity). The Petitioner's further case is that Respondent No. 6 is developing the land which is in excess of the holding as contemplated by the Urban Land Ceiling Act and in these circumstances, the Petitioner is entitled to a dwelling in the construction put up by Respondent No. 6.Reference is made to the various provisions of the Act. It is then pointed out that the Petitioner has also addressed

representations amongst others to Respondent Nos. 2 to 4. The Petitioner received reply dated 16.6;.2003 in response to the notice of Petitioner's Advocate that the scheme sanctioned by the M.M.R.D.A. in 1986 is beyond the purview of the monitoring committee which has been set up pursuant to the judgment of the Apex Court in M/s. Shantistar Builders Vs. Narayan Khimsalal Totame (1990) 1 SA.C.C. 520. It is not necessary to refer to other averments as the final relief sought for by the Petitioner is a writ of Mandamus or other appropriate writ or direction to direct respondents to disclose steps taken by them to comply with order and directions of the Apex Court in Shantistar Builders (supra). Further relief is sought by way of declaration that the scheme sanctioned by the M.M.R.D.A. in 1986 is illegal, improper, contrary to the law and ultra virus and the same is to be set aside and or to be quashed. The relief is also sought to direct respondents to produce documents and direction to Respondent Nos. 2, 3 and 4 Monitoring Committee to consider application of the Petitioners and thereafter to allot the tenement at the rate prescribed by the Respondent No. 1 under the ULC Act, 1976. It is not necessary to advert to various other reliefs as

set out therein.

2. On behalf of the M.M.R.D.A. Mr. Bapusaheb P. Nukte, Land Manager filed an affidavit dated 7.4.2005. In the said affidavit reference is made to various properties identified in C.T.S. Nos. 4,5,8,9,10,11,12,13 (part, 14(Part), 16 (Part), 17 (Part), 18 (Part), 19 (Part), 24 (Part) and 25 of the village Powai admeasuring 3,64,760 sq. mtrs. (i.e. 36.47 hectares). It is pointed out that a scheme was prepared under the provisions of the M.M.R.D.A. Act, 1974 on 24.1.1977 known as "Powai Area Development Scheme" for the development of the land situated at village Powai, taluka Kurla. It is further contended that by Notification dated 2.6.1979 the State Government directed M.M.R.D.A. to undertake execution of the said Powai Area Development Scheme. By notice dated 29th June, 1977 the State Government called upon the owners of the lands falling under the said Powai Area Development scheme to show cause against intended acquisition of the lands under the said M.M.R.D.A. Act. Final notification under Section 32(1) of the M.M.R.D.A. Act was issued on 12.5.1983. By virtue of the said notification the lands which had vested with State Government upon the publication of the said notification were transferred to M.M.R.D.A. In other words the lands stood transferred to

M.M.R.D.A. The affiant further sets out that tripartite Agreement was entered into dated 19.11.1986 between the Governor of Maharashtra and various land owners read with Agreement to lease dated 19th November, 1986 executed between M.M.R.D.A. and the landholders as licensees of the said lands. Respondent No. 6 it is pointed out is the developer who is claiming through such landholders. It is set out that considering provisions of Section 19 and 20 of the Urban Land Ceiling Act, the question of the scheme relating to weaker sections of the society does not arise and does not apply to the lands which are subject matter of the present petition. It is therefore, set out that the grievance made by the Petitioner is misconceived and not maintainable. It is then pointed out that M.M.R.D.A. after execution of the tripartite Agreement, and Agreement to Lease dated 19th November, 1986 passed an order dated 12.2.1987 under Section 20 of the Urban Land Ceiling Act. The order was passed by Metropolitan Commissioner of M.M.R.D.A. who is conferred with the power as ex-officio, Secretary to the Government of Maharashtra, Housing and Special Assistance Department exempting the said land as covered by the said Tripartite Agreement. It is pointed out that by order under section 20 the Land is exempted

from the provisions of Chapter III of the Urban Land Ceiling Act subject to all the conditions as set out in Tripartite Agreement and Agreement to Lease both dated 19th November, 1986, There are no other conditions. The exemption were granted to Powai Area Development Scheme. It is pointed out in the circumstances that the judgement of the Apex Court in Shantistar Builders (supra) is not applicable. It is also pointed out that every order under Section 20 is not governed by the principles of the development for weaker sections of the society.

3. On behalf of Respondent No. 6, one Mr. K.V. James has filed affidavit dated 19.7.2004. It is pointed out the the petition has been filed on the basis that the order under Section 20(1) of the Urban Land Ceiling Act is passed in respect of the Powai Lands for weaker section of the society prescribing final selling price and other restrictions as prescribed in the case of Shanti Star Builders (supra). Reference is then made to the vesting of the land with M.M.R.D.A. and Tripartite agreement. It is then pointed out that pursuant to tripartite agreement dated 19.11.1986 the order dated 12.2.1987 are pursuant to the arrangement between the land holders and Respondent

NO. 6 in respect of the portion of the said Powai lands and Respondent No. 6 and its group of companies have constructed more than 50 buildings, developed more than 4,000 flats and/or tenements and more than 4,000 families are occupying tenements in the portion of the said Powai lands for last more than 17 years. It is further contended that the said challenge and allegations made by the Petitioner is after more than 17 years of Respondent No. 5 exempting the said Powai Lands and the same being developed by Respondent NO. 6. It is further set out that there is gross delay and laches on the part of the Petitioner in filing the above Petition and the same ought to be rejected with costs.

4. On behalf of the Monitoring committee, an affidavit has been filed by Shivaji Ranoji Johdhale. It is pointed out that the said lands belong to M.M.R.D.A. Reference is made to the Monitoring committee to be set up in terms of the direction of the Apex Court in Shanti Star Builders. Reference is made to resolution dated 16.11.1996 to contend that the resolution being prospective will apply to scheme sanctioned thereafter. Reference is made to various other orders passed by the various Division Benches of

this court. It is also pointed out that the Petitioner and her colleagues are in the habit of filing litigation with obvious motives, by making serious and baseless allegations against these Respondents and against the State Government. It is therefore, prayed that the petition be dismissed.

5. On behalf of the Petitioner, rejoinder has been filed. Various documents have been filed which also includes an order of Division Bench of this court admitting a writ Petition which according to learned counsel is based on same or similar facts as in the present case.

6. At the hearing of this Petition, on behalf of the Petitioner, their learned counsel submits that considering the scheme of the Urban Land Ceiling Act, the land being developed by Respondent NO. 6 will have to be treated as surplus land. Once the land is surplus, the ratio of the judgement in the case of M/s. Shanti Star builder would apply. It is also pointed out that the ratio of the Judgment would indicate that it is applicable not only prospectively but also retrospectively. The Petitioner being eligible, it is for the monitoring committee to decide the application made by the

petitioner. It was also submitted on behalf of the Petitioner, that the Urban Land Ceiling Act is a Central Government Legislation whereas the M.M.R.D.A. Act, 1974 is a State Legislature. It is therefore, submitted that even if a scheme is framed under the M.M.R.D.A. Act that cannot over ride the provisions of the Urban Ceiling Act.

7. On the other hand, on behalf of the respondents, their learned counsel, point out that the scheme was sanctioned way back in 1986. The Petitioner approached this court only in the year 2004. The Petition is hit by laches and on this count alone the petition is liable tobe dismissed. It is next contended that under Section 19 the provisions of the Urban Land Ceiling Act would not apply to the lands vested in M.M.R.D.A. It is further submitted that considering section 20 provisions of Land Ceiling Act are not applicable. It is further submitted that the lands which are being developed are not subject to any scheme for weaker section and consequently the petition is devoid of merit. The Petitioner which is admitted it is pointed out is based on facts and issues which are different.

8. With the above, we may firstly consider the

provisions of the Urban Land Ceiling Act. Under Section 19 the provisions of the Act shall not be applicable to Governments and Authorities as set out therein. This includes any Corporation established by or under the Central of State Act. The M.M.R.D.A. is the Corporation constituted under the provisions of the M.M.R.D.A. Act,1974. By virtue of the notification dated 12.5.1983, the lands vested under the State Act which were subsequently transferred to M.M.R.D.A. In other words, the provisions of Chapter III of M.M.R.D.A. Act would not be applicable to the lands vested with State Government and thereafter transferred to M.M.R.D.A. By virtue of Tripartite agreement the portion of the lands were transferred to the owners by way of lease/licence. Considering the expression "hold" under Section 2(l) of the Urban Land Ceiling Act, assuming that the lands which vested with State Government and had been transferred to the private party, it may be possible to contend that the provisions of the Urban Land Ceiling Act are applicable. However, in the instant case, an order was passed under Section 20 on 12.2.1987. In other words, after issuance of the said notification, the said land s even if held by private persons on the lease/licence will be exempted from the provisions of the chapter.

Unless there was any term specified whereby the provision is made for development of the land for weaker section of the Society. That is not so in the instant case. Neither have the lands been acquired under Section 23. The judgment of the Apex Court in M/s.Shanti Star proceeds on the footing that there was scheme framed under which land was to be developed.The judgement would indicate the kind of tenements which had to be constructed. The developer therein sought to develop contrary to the scheme as sanctioned. It is in that context that the Apex Court was pleased to issue directions as set out in M/s. Shantistar. When there is a Scheme sanctioned under the Act, a Monitoring committee has been set up and Monitoring Committee will have to consider applications. In the instant case, there is no such scheme. Once that be the case, the ratio in M/s. Shantistar would not apply. Apart from that as noted earlier the land stood exempted both by virtue of the fact that the lands vested with State Government under Section 19 and even thereafter assuming that the lease/licence created interest in third party by virtue of the order passed under Section 20. The Judgement relied upon by the learned counsel for the Petitioners in Maharao Sahib Shri. Bhim Singhji Vs. Union of India 1981 (1) S.C.C. 166 is

in the matter of petitioners who had challenged the validity of the Act, and to that extent the Apex Court has been pleased to consider the scheme of the Act. We are really not concerned with the ratio of that judgment on the facts of this case. The Judgement in so far as Palitana Sugar Mills (P) Ltd. Vs. State of Gujarat (2004) 12 SCC 645, to our mind is not applicable. There can be no dispute that the Judgment of the Apex Court is not only binding on this court but all courts and tribunals pursuant to article 141 of the Constitution of India.

9. The issue of provisions of inconsistency between the Urban Land Ceiling act and the M.M.R.D.A. Act, 1974 to our mind is misplaced. The first applies in the case of excess land and the second for development of land within the local area of the authority. In the instant case, the land was acquired by the State Government. Once that be the case, considering Section 19 provisions of the Land Ceiling Act in the absence of any scheme having been framed under the Central Act would not apply.

10. It is no doubt true that the Petitioner has also tried to challenge the scheme. The learned

counsel state that the scheme framed is not under the Urban Land Ceiling Act but under the provisions of the M.M.R.D.A. Act. The scheme was framed way back in the year 1986. The Petitioner has approached this court in the year 2004. In the meantime as set out by Respondent No. 6 more than 50 buildings have been constructed. Lands were acquired by the State Government from their owners without compensation and in lieu they were given development rights over some portion of the lands acquired from them. Third party interests have been created. Even otherwise, after the lapse of such long period, this will not be a fit case for this court to interfere in the exercise of its extra ordinary jurisdiction. It was also brought to our attention that though Petitioner herein has applied for dwelling unit, one Sukhwinder Singh, son of the Petitioner had filed another petition before this court being Writ Petition No. 1506 of 2004 which was dismissed by this court dated 6.4.2005 as he has sought to ventilate not his personal grievance but grievance on behalf of 29 other persons. Similarly another Petition being Writ Petition No. 2521 of 2004 was also disposed of by this court on the same day.

11. For all the aforesaid reasons, we do not find

any merit in the petition which is consequently dismissed. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)